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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11 STATE FARM MUTUAL AUTOMOBILE)
 INSURANCE COMPANY,)
 12)
 Plaintiff,)
 13)
 v.)
 14)
 LORETTA CORRALES, et al.,)
 15)
 Defendants.)
 16)

Case No.C 10-04434 PVT

STIPULATION AND AGREEMENT
OF COMPROMISE AND SETTLEMENT
AND XXXXXXXXXXXX ORDER

17 IT IS HEREBY STIPULATED AND AGREED by and between plaintiff State Farm
 18 Mutual Automobile Insurance Company ("Plaintiff") and defendant Loretta Corrales (hereinafter
 19 the "Federal Defendant"), by and through its undersigned counsel, as follows:

20 1. The parties do hereby agree to settle, compromise and dismiss the above-
 21 captioned action ("This Action") under the terms and conditions set forth herein.

22 2. The Federal Defendant agrees to pay the sum of \$2,500.00 ("the settlement
 23 amount") to plaintiff under the terms and conditions set forth herein. This is full, final and
 24 complete settlement that resolves all subrogation claims that plaintiff has or may have arising out
 25 of the subject automobile accident of August 29, 2007, including but not limited to the
 26 subrogation claims set forth in plaintiff's complaint.

27 3. The plaintiff and its heirs, executors, administrators, assigns and attorneys
 28 hereby agree to accept the settlement amount, in full and final settlement and satisfaction of the

1 claims raised in This Action under the terms and conditions set forth herein.

2 4. It is also agreed, by and among the parties, that the settlement amount
3 represents the entire amount payable to plaintiff and its heirs, executors, administrators, assigns
4 and attorneys.

5 5. It is also agreed, by and among the parties, that the settlement amount shall
6 be made payable to plaintiff and its attorney, Jeffrey W. Parks, and shall be mailed to its
7 attorney's business address.

8 6. It is also agreed, by and among the parties, that neither plaintiff nor any of
9 its attorneys may make any claim for attorney's fees or other costs against the Federal Defendant.
10 It is also agreed, by and among the parties, that the respective parties will bear their own costs,
11 fees, and expenses and that any attorney's fees owed by the plaintiff will be paid out of the
12 settlement amount and not in addition thereto.

13 7. It is also understood, by and among the parties, that pursuant to Title 28,
14 United States Code, Section 2678, that if plaintiff incurred any attorney's fees for services
15 rendered in connection with this action, said fees shall not exceed 25 percent of the amount of the
16 compromise settlement.

17 8. In consideration of the settlement amount as set forth above, the plaintiff
18 agrees that it will immediately upon execution of this agreement, execute a Stipulation of
19 Dismissal, which stipulation shall dismiss, with prejudice, all subrogation claims asserted in This
20 Action or any subrogation claims that could have been asserted in This Action. The fully
21 executed Stipulation of Dismissal will be held by counsel for the Federal Defendant and will be
22 filed with the Court upon receipt by plaintiff's attorneys of the settlement amount.

23 9. In consideration of the payment of the settlement amount as set forth
24 above, the plaintiff hereby releases and forever discharges Loretta Corrales, the IRS, the United
25 States of America, and any and all of its past and present agencies, officials, employees, agents,
26 attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes of
27 actions, claims, and demands of any kind and nature whatsoever, whether suspected or
28 unsuspected, arising in law or equity, arising from or by reason of any and all known, unknown,

1 foreseen, or unforeseen injuries, and the consequences thereof, resulting from the facts,
2 circumstances and subject matter that gave rise to This Action, including all claims under the
3 Federal Tort Claims Act ("FTCA"), all constitutional or *Bivens* claims, any and all current or
4 future subrogation claims by plaintiff's successors, and any other subrogation claim relating to
5 the subject accident, or any and all subrogation claims that could have been asserted in the
6 Complaint.

7 10. In consideration of the payment of the settlement amount as set forth
8 above, the plaintiff further agrees that it may not and will not use or rely on the incidents and
9 actions underlying the Complaint in any other administrative proceeding, state court action or
10 federal court action to prove any kind of further or future subrogation claim against the United
11 States or its agencies and employees.

12 11. The provisions of California Civil Code Section 1542 are set forth below:

13 A general release does not extend to claims which the creditor does not know or
14 suspect to exist in his favor at the time of executing the release, which if known
 by him must have materially affected his settlement with the debtor.

15 The plaintiff having been apprised of the statutory language of Civil Code Section 1542, and
16 fully understanding the same, nevertheless elects to waive the benefits of any and all rights it may
17 have pursuant to the provision of that statute and any similar provision of federal law. The
18 plaintiff understands that if the facts concerning the plaintiff's alleged damages and the liability
19 of the Federal Defendant, the United States or its agents, servants, or employees, for damages
20 pertaining thereto are found hereafter to be other than or different from the facts now believed by
21 him to be true, this agreement shall be and remain effective notwithstanding such material
22 difference.

23 12. The parties acknowledge that neither this agreement nor anything
24 contained herein shall constitute an admission of liability or fault on the part of the Federal
25 Defendant, the United States or its agents, servants, or employees. This agreement is entered into
26 by the parties for the purpose of compromising disputed claims, avoiding the expenses and risks
27 of litigation, and buying peace.

28 13. This agreement may be pled as a full and complete defense to any action

1 or other proceeding, including any local, state or federal administrative action, filed by plaintiff
2 against Federal Defendant, the United States or its agents, servants, or employees, which arises
3 out of the claims released and discharged by this agreement.

4 14. If any withholding or income tax liability is imposed upon plaintiff based
5 on payment of the settlement sum as set forth herein, plaintiff shall be solely responsible for
6 paying any such liability. Plaintiff will indemnify and hold harmless the Federal Defendant from
7 any liability the Federal Defendant may incur from any government agency arising out of any
8 failure by plaintiff to pay any tax liability she might be responsible for from any government
9 agency. Plaintiff will also defend, indemnify and hold harmless the Federal Defendant from any
10 property damage claims paid by plaintiff made by plaintiffs' insureds or any other party or
11 insurer involved in the subject accident. Federal defendant represents that it is not presently
12 aware of any such claims.

13 15. Plaintiff has been informed that payment of the settlement amount may
14 take 120 days or more to process.

15 16. The parties agree that the District Court shall retain jurisdiction over this
16 matter for the purposes of resolving any dispute alleging a breach of this agreement.

17 17. Each party acknowledges that they are fully aware of and understand all of
18 the terms of the agreement and the legal consequences thereof. It is further acknowledged that
19 the parties have mutually participated in the drafting of this agreement and it is agreed that no
20 provision herein shall be construed against any party hereto by virtue of the drafting of this
21 agreement.

22 18. If any provision of this agreement shall be held invalid, illegal, or
23 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in
24 any way be affected or impaired thereby.

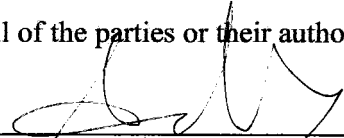
25 19. This instrument shall constitute the entire agreement between the parties,
26 and it is expressly understood and agreed that this agreement has been freely and voluntarily
27 entered into by the parties hereto. The parties further acknowledge that no warranties or
28 representations have been made on any subject other than as set forth in this agreement.

1 20. The parties agree that this Stipulation for Compromise Settlement and
2 Release, including all the terms and conditions of this compromise settlement and any additional
3 agreements relating thereto, may be made public in their entirety, and the plaintiff expressly
4 consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

5 21. The persons signing this Stipulation and Agreement warrant and represent
6 that they possess full authority to bind the persons on whose behalf they are signing to the terms
7 of the settlement.

8 22. This agreement may not be altered, modified or otherwise changed in any
9 respect except in writing, duly executed by all of the parties or their authorized representatives.

10 Dated: October 25, 2010



Representative
State Farm Mutual Automobile Insurance Company
Plaintiff


13 Dated: October 5, 2010



Jeffrey W. Parks
Attorney for Plaintiff

MELINDA HAAG
United States Attorney

17 Dated: October 5, 2010

By: 

JAMES A. SCHARF
Assistant United States Attorney
Attorney for the Federal Defendant

21 **PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT,
22 APPROVED AND SO ORDERED:**

24 Dated: 11/10/10



Hon. Patricia V. Trumbull
United States Magistrate Judge